

JLC/LEG


file
former
spouse

22 June 1984

MEMORANDUM FOR: Deputy Director, Special Programs and
Benefits, Office of Personnel

Deputy Director, Policy, Analysis and
Evaluations, Office of Personnel

STAT FROM:


Liaison Division
Office of Legislative Liaison

SUBJECT: H.R. 2300 (Redrafted): Civil Service Spouse
Retirement Equity Act

1. Attached hereto is a copy of the redrafted version of the subject Bill. While the revised version has not been formally introduced, it is what the principals are negotiating. The Bill is still in Subcommittee (Compensation and Employee Benefits).

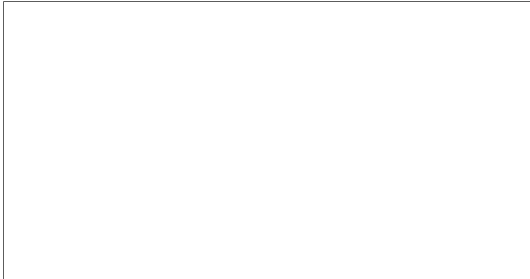
2. Also attached are copies of the reactions to the revised version by the Office of Personnel Management and the National Association for Uniformed Services, presented at the 20 June 1984 Subcommittee hearing on the subject.

3. OPM submitted to Congress on 11 June a draft Bill that is intended to replace H.R. 2300. The OPM Bill will be forwarded to you as soon as it is obtained.

4. Despite the flurry of activity and Congresswomen Oakar's and Schroeder's keen interest in quick action, I do not anticipate enactment by the 98th Congress. That is also the opinion of Jerry Klepner, Staff Director of the Subcommittee on Compensation and Employee Benefits.

STAT

Attachments
as stated



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OLL:LD:JBW:aw (22 June 1984)

98th Congress
2nd Session

H.R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. Schroeder introduced the following bill; which was referred to the Committee on _____

A BILL

To authorize a court of any State or the District of Columbia to order that **survivor benefits** be paid to the former spouse of a Civil Service employee incident to divorce proceedings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. DEFINITIONS.

(a) Section 8331 of title 5, United States Code, relating to definitions for purposes of civil service retirement, is amended by adding at the end thereof the following new paragraphs:

"(23) 'court' means any court of any State or of the District of Columbia;

"(24) 'court order' means any court decree of divorce or annulment, or any court order or court approved property settlement agreement incident to any court decree of divorce or annulment which orders that a portion of the annuity of an employee or Member, or a survivor benefit based on the service of such employee or Member, be paid to a former spouse by such employee or Member, the Director of the Office of Personnel Management, or the Government;

"(25) 'former spouse' means a former wife or husband of an employee or Member who was married to such individual during periods of service by that individual which are creditable under

section 8332 of this title."

(b) Such section 8331 of title 5, United States Code, is further amended -

(1) by striking out "and" at the end of paragraph (21), and

(2) by striking out the period at the end of paragraph (22) and inserting in lieu thereof a semicolon.

Section 2. SURVIVOR BENEFITS FOR FORMER SPOUSES.

(a) Section 8341 of title 5, United States Code, relating to survivor annuities, is amended by adding at the end thereof the following new paragraphs:

"(h)(1) A survivor annuity shall be paid to a surviving former spouse by the Office of Personnel Management in accordance with the terms of a court decree of divorce, annulment or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a former spouse does not bar recovery by any other person unless the first court order involving an employee or Member which awarded survivor benefits to a former spouse of an individual provided that 55 percent of the employee's annuity be paid to that surviving former spouse.

"(2) Paragraph 1 shall only apply to payments made by the Office of Personnel Management under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may by regulation prescribe. The Office of Personnel Management shall prescribe such regulations

within 120 days after enactment of this Act.

"(3) The amendments made by this Act shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of enactment of this Act.

"(4) A former spouse shall not be qualified for a survivor annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

"(5) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

"(6)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 8341(b)) with respect to any employee or Member may not exceed 55 percent of the full amount of the employee's or Member's annuity, as calculated under section 8339 of this title.

"(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 8341(b)) with respect to an employee or Member only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective

right to such annuity has not terminated by reason of death or remarriage.

"(C) After the death of an employee or Member, a court order may not adjust the amount of the annuity of any former spouse.

"(7)(A) For each full month after a former spouse of an employee or Member dies or remarries before attaining age 60, the annuity of the employee or Member, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

"(B) The employee or Member may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 8341(b) of this title for any spouse of the employee or Member.

"(8) In the case of an employee or Member providing a survivor benefit under subsection (7)(B) for a former spouse --

"(A) such employee or Member may elect, or

"(B) a court order under this subsection may provide for,
an additional survivor annuity for any other former spouse or spouse surviving the employee or Member, if the employee or Member satisfactorily passes a physical examination as prescribed by the Office of Personnel Management.

"(9)(A) In accordance with regulations which the Office shall prescribe, the employee or Member involved may provide for any annuity under this subsection -

"(i) by a reduction in the annuity or an allotment from the pay of the employee or Member,

"(ii) by a lump sum payment or installment payments to the Fund, or

"(iii) by any combination thereof.

"(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Office.

"(C) If a former spouse predeceases the employee or Member or remarries before attaining age 60 -

"(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

"(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Office.

"(D) Under regulations prescribed by the Office, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection in the event the former spouse of the employee or Member dies or

remarries before attaining age 60.

"(10) Section 8340 of this title shall apply to an annuity under this subsection."

(b) Section 8341(b)(1) is amended by inserting "subsection (h) of this section, or" immediately after "as provided in".

(c)(1) Section 8341(b) of title 5, United States Code, relating to survivor spouse annuities, is amended by adding at the end thereof the following new paragraph:

"(4) The amount of the annuity calculated under this subsection for a surviving spouse in any case in which there is also a surviving former spouse for whom survivor benefits have been ordered pursuant to a court order or court approved property settlement agreement with respect to the same employee or Member may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 8341(h)(1)."

(2) Section 8341(d) of title 5, United States Code, relating to survivor spouse annuities in the case of death in service, is amended by adding at the end thereof the following new sentence: "Any surviving former spouse shall be entitled to a survivor annuity pursuant to the terms of a court order under section 8341(h) as if the employee or Member died after being entitled to an annuity under this subchapter."

(d) Section 8334 of title 5, United States Code, relating to annuities and pay on reemployment, is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) The Office shall prescribe regulations to provide for the application of this section in any case in which an annuitant has a former spouse for whom survivor benefits have been ordered pursuant to a court order under section 8341(h) of this title."

(e) Section 8345(j)(1) of title 5, United States Code, is amended by deleting "if and to the extent expressly provided for in" and inserting in lieu thereof "in accordance with"; and by deleting the period at the end of the first sentence and adding at the end thereof "which orders that a portion of the annuity of an employee or Member be paid to that spouse by such employee or Member, the Director of the Office of Personnel Management, or the Government."

Section 3. JOINT EMPLOYEE-SPOUSE ELECTIONS.

(a) Section 8339(j) of title 5, United States code, relating to election of survivor annuities, is amended to read as follows:

"(j)(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B), if at the time of retirement an employee or Member is married (or has a former spouse who has not remarried before attaining age 60 and for whom a court has ordered that survivor benefits be paid under section 8341(h)), the employee or Member shall receive a reduced annuity and provide a survivor annuity under section 8341(b) for the employee's or Member's spouse or a survivor annuity under section 8341(h) for the former spouse, or a combination of such annuities, as the case may be.

"(B) At the time of retirement, a married employee or Member and the employee's or Member's spouse may jointly elect to waive a

survivor annuity for that spouse under section 8341(b), or to reduce such a survivor annuity by designating a portion of the annuity of the employee or Member as the base for the survivor benefit. Any such election shall be in writing and shall be acknowledged before a notary public. In the event the marriage is dissolved following an election for such a reduced annuity, any survivor benefits ordered by a court under section 8341(h) may not exceed the portion of the employee's or Member's annuity designated under this subparagraph.

"(C) The Office of Personnel Management may prescribe regulations under which an employee or Member may make an election under subparagraph (B) without the employee's or Member's spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the employee or Member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

"(2) The annuity of an employee or Member providing a survivor benefit under section 8341(b) or 8341(h), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2 1/2 percent of the first \$3,600 plus 10 percent of any amount over \$3,600.

"(3) An annuity which is reduced under this subsection or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the employee is dissolved, be recomputed and paid for each month during which the employee or Member is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not

been reduced, subject to any reduction required to provide a survivor benefit under section 8341(h). Upon remarriage the retired employee or Member may irrevocably elect, by means of a signed writing received by the Office within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 8341(h)), and shall be effective the first day of the month beginning one year after the date of remarriage.

"(4) The Office shall, on an annual basis --

"(A) inform each employee or Member of the rights of election under this subsection; and

"(B) to the maximum extent practicable, inform spouses or former spouses of employees of their rights under this subchapter."

(b) Section 8339(k)(1) of title 5, United States Code, relating to annuities for individuals having insurable interests, is amended by inserting after "an unmarried employee or Member" the following: "who does not have a former spouse for whose benefit a reduction is made in the employee's or Member's annuity and".

(c) Section 8341(b)(1) of title 5, United States Code, is amended by striking out "unless the employee or Member has notified the Office" and all that follows and inserting in lieu

thereof the following: "unless an election has been made under section 8339(j)(1) or, in the case of remarriage, an election has not been made under section 8339(j)(3)."

(d) Section 8344(a) of title 5, United States Code, relating to annuities and pay on reemployment, is amended by striking out "unless, at the time of claiming the increase payable under subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased" and inserting in lieu thereof "unless the annuitant and the annuitant's spouse jointly elect to the contrary at the time in a written election acknowledged before a notary public."

Section 4. SURVIVOR BENEFITS IN THE CASE OF DIVORCES PRIOR TO EFFECTIVE DATE.

(a) Any current or former employee or Member in the Civil Service Retirement and Disability System who on the effective date, has a former spouse shall receive a reduced annuity and provide a survivor annuity for such former spouse if -

(1) the employee or Member so elects by means of a court approved spousal agreement, or

(2) a court order under section 8341(h) so provides.

(b)(1) If the employee or Member has not retired under such system on or before the effective date, an election under subsection (a)(1) may be made, or a court order under subsection (a)(2) may be issued, at any time before retirement.

(2) If the employee or Member has retired under such system on or before the effective date of this Act, an election under

subsection (a)(1) may be made, or a court order under subsection (a)(2) may be issued, within such period after the effective date as the Office of Personnel Management may prescribe.

(3) In any case in which an employee or Member is married and has been married for more than one year, an election under subsection (a)(1) may only be made with the written concurrence of the spouse of the employee or Member.

(4) For purposes of applying subchapter III of chapter 83 of title 5, United States Code, any such election or court order shall be treated the same as if it were a court order under section 8341(h) of title 5, United States Code.

(c) An election under subsection (a)(1) may provide for a survivor benefit based on all or any portion of that part of the annuity of the employee or Member which is not designated or committed as a base for survivor benefits for a spouse or any other former spouse of the employee or Member. The employee or Member and the employee's or Member's spouse may make an election under section 8339(j)(1)(B) of title 5, United States Code, prior to the time of retirement for the purpose of allowing survivor benefits to be provided under this section.

(d) The amount of the reduction in the employee's or Member's annuity shall be determined in accordance with section 8339(b)(2) of title 5, United States Code. Such reduction shall be effective as of -

(1) the commencing date of the employee's or Member's annuity, in the case of an election under subsection (b)(1), or

(2) the effective date of this Act, in the case of a

court order under subsection (b)(2).

(e) In the case of an employee or Member who died before the effective date of this Act after becoming entitled to an annuity and who -

(1) at the time the employee or Member became entitled to an annuity was married and did not elect not to provide for a survivor benefit for a surviving spouse under section 8339(j)(1) of title 5, United States Code;

(2) subsequently was divorced from the spouse to whom the employee or Member was married at the time of retirement;

(3) died and was not married at the time of death (or if then married, was not married to an individual entitled to an annuity under section 8341(b) of title 5, United States Code), the individual to whom the employee or Member was married at the time the employee or Member retired shall be entitled to an annuity under section 8341 of title 5, United States Code, as if married to the employee or Member at the time of death.

(f) For purposes of this section, the terms "former spouse", "employee", "Member", and "court order" have the same meanings as when used in subchapter III of chapter 83 of title 5, United States Code.

Section 5. EFFECTIVE DATE.

(a) The provisions of this Act shall take effect beginning on the one hundred and twentieth day after the date of enactment of this Act.

(b) Except to the extent provided in section 4, the provisions of this Act regarding the rights of former spouses to

receive survivor annuities under subchapter III of chapter 83 of such title 5 shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of a current or former employee or Member in the Civil Service Retirement and Disability System.